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Examination of the City of York Local Plan

The Inspectors letter to CoYC dated 12.06.2020.

**Note on concerns arising from the Inspectors' decision that
the Local Plan greenbelt proposals are in general conformity
with the RSS Policy.**

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Section 1.0 Introduction.

1.1 The Inspectors' letter of the 12.06.2020 sets out, in numbered paragraphs, the 'Context' to their findings from the Phase 1 hearings. These are:

1. *York does not currently have an adopted development plan that includes Green Belt boundaries. This Local Plan proposes to introduce Green Belt boundaries for the first time in a development plan for York. The boundaries proposed are:

(a) an 'inner boundary' around the city of York;

(b) an 'outer boundary';

(c) boundaries around some villages, 'insetting' them rather than including them in the Green Belt; and

(d) boundaries around sites proposed for development in the Local Plan.*

2. *The examination is being held under the 'transitional arrangements', such that it is the policies of the 2012 NPPF that apply. Paragraphs 82 and 83 of the NPPF both require a demonstration of exceptional circumstances. The former relates to situations where new Green Belts are being established, the latter of the alterations of established Green Belt boundaries.*

3. *Two policies of the RSS - being Policies YH9C and Y1C - and the RSS Key Diagram have not been revoked, insofar as they relate to the Green Belt around York. These have a bearing on the question of whether or not it is necessary to demonstrate exceptional circumstances for the purposes of paragraphs 82 and 83 of the NPPF. For the Local*

Plan to be legally compliant, including in relation to the Green Belt boundaries proposed, it must be 'in general conformity with' the RSS.

4. *In the light of all this, we consider below the need or otherwise for exceptional circumstances to be demonstrated for the purposes of paragraphs 82 and 83 of the NPPF, and also consider whether or not the Green Belt boundaries are in general conformity with the RSS. In coming to our conclusions, although we do not refer to all the specific representations made, we have had regard to all of the evidence that we have read and heard.*

1.2 This Note is restricted to the issue of the '*general conformity with the RSS*'. In particular that means the RSS policies preserved by the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013. As in my submissions to the Local Plan the expression '*Primary YGB Policy*' means the higher order policy created at County or Regional level namely through the Structure Plans and Regional Spatial Strategy. The expression '*the urban core*' means the continuous built-up area of the City of York as shown coloured grey within the inner circle of the RSS Diagram of the general extent of the York greenbelt.

1.3 This Note addresses the issues identified by the Inspectors in the Context of their letter (set out above at para. 1) and numbered 1 (a) and 1 (b), that is in respect of the inner and outer boundaries.

1.4 My concerns primarily focus on the issues of the correct interpretation of these policies in respect of the inner and outer boundaries and I conclude that the correct interpretation could only lead to a conclusion opposite to that expressed by the Inspectors. I recognise that

the Inspectors letter does not set out their intelligible and adequate reasons in respect of this principal important controversial issue. However, the only means by which that finding could be reached is by an incorrect interpretation of the policy. That would be an error in law.

1.5 I am aware this Note does include references to the evidence base but in that regard it is not comprehensive of the extent of my concerns. That issue along with others raised in the Phase 1 hearings are reserved though I can foresee the likelihood of further grounds for challenge in that regard but that should not be construed as acceptance of those findings.

1.6 This Note, therefore, sets aside the Inspectors' consideration of exceptional circumstances, inset boundaries around settlements and the exclusion of areas within the general extent for development sites.

1.7 I consider the Inspectors' conclusions must be made on an interpretation of the RSS policies and their interpretation appears to be misconceived. This misconception underpins their conclusions on points 1(a) and 1(b). These matters, namely the interpretations are not matters of planning judgement, which is an issue for the Inspectors as decision makers but interpretation of policy is a matter for the Courts.

1.8 The format of this Note is to set out the legal framework in relation to the issue of policy interpretation and then to separately consider the interpretation in relation to the RSS saved policies to their application to the outer boundary and then the inner boundary.

1.9 In Section 2, I set out a summary of the broad history of the YGB through historical events of relevance to boundary issues. The importance of this is resolved in the opening

paragraphs of the Supreme Court ruling in *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2020] UKSC 3*. In its opening paragraphs Carnwath LJ stated that the history and aims of green belt policy were relevant to its current interpretation. In regard to the YGB policy, the history and aims are important to not only National Policy but also the Primary Policy.

1.10 My conclusions set out in my main submissions, at the Phase 1 hearings and expanded upon here, have led me to identify a further issue of interpretation of the RSS policies. This is in respect of Policy Y1C2. On re-reading the Revocation Order and the original text of the adopted RSS (its history), it now appears to me, Y1C2 is an environmental policy but one separate from the issue of the York Green Belt.

1.11 If that is correct, it becomes very relevant to the issue of general conformity and the inner boundary because the *'important open areas'* referred to in Y1C2 are the open areas known as The Strays. These open areas penetrate into or are within the urban core of the City. I have argued these areas should not be treated as green belt but that green wedge style policy would better protect the areas. However, if these areas are addressed in RSS as a separate policy from those relating to the Green Belt, it supports the interpretation of the Key Diagram that these areas are not envisaged by the RSS policy to be included in the York Green Belt [YGB]. This further supports that the inner boundary is to be located outside the outer ring-road.

1.12 The absence of any comment relating to this in the Inspectors letter confirms my perception that they have mis-interpreted the RSS policy.

2.0 Relevant history of the YGB, National Green Belt Policy and Primary YGB Policy.

YGB History.

- 2.1 Between 1955 and 1980, there had been a number of sketch green belt proposals promoted which affected parts of the area around York. However, all these proposals were for partial or limited areas adjacent to the urban core of York and successive Ministers rejected the partial proposals, requiring a comprehensive approach. No sketch plan greenbelts were ever approved.
- 2.3 The underlying problem was the lack of a single organ of local government to provide this comprehensive approach. Until 1974, the environs of York were divided between 3 County Councils and a larger number of secondary authorities (rural district councils). York itself was not within any County but was an independent County Borough.
- 2.4 In the 1974 Local Government reorganisation, the whole area became comprised within one County area (North Yorkshire). York itself, which had previously been independent of any county structure became a second-tier authority along with Harrogate, Hambleton, Ryedale and Selby. York remained a small area with its outskirts split between these other 4 second-tier authorities.

2.5 The County Council proposed, in 1980, in its first Structure Plan a policy for the general extent of a greenbelt around York. That policy remained in Structure Plan policy unchanged until replaced in 2008 by RSS policy.

National Green Belt Policy.

2.6 The national policy extant at the time of the policy which created the general extent of the YGB (The North Yorkshire Structure Plan 1980) was contained in the Ministerial Circulars 42/55 and 50/57.

2.7 At the date the draft York Green Belt Local Plan was deposited in 1991, national policy was set out in Planning Policy Guidance 2 (1988). That post-dated the Structure Plan policy E8 designating the general extent of the YGB with an outer boundary at about 6-miles from York city centre (The Structure plan policies were typed entirely in upper case but the RSS policy sets the words **city centre** in lower case, though it is incorrectly re-produced in the CoYC Clarification Note). PPG2 stated the structure plan policy had been approved, displayed a map based on the Structure Plan Key Diagram and stated the approximate area of the YGB to be 50,000 acres.

2.8 The Department of Environment, which produced PPG2 also produced a Booklet, entitled The Green Belts, in 1988. This repeated the material on the approximate area and added a dialogue about the YGB as follows:

***York.** A Green Belt around York has been approved in principle for many years and a belt whose outer edge is about 6 miles from York City centre was formally approved in 1980 as part of the North Yorkshire County Structure Plan. Its main purpose is to*

safeguard the special character of the historic city, which might be endangered by unrestricted expansion. The bulk of the land in the Green Belt is good and pleasant farmland providing links with open land running into the built-up area of the city.

2.9 There is dialogue related to each of the Provincial Green Belts. That identified for York the main purpose of the YGB, which had not been set out in the Structure Plan policy. In addition to York, Cambridge and Oxford are identified as having the same main purpose. In the case of Oxford, it states the green belt is to prevent further growth and at Cambridge to limit its size. There is no such limitation to growth indicated for York. That must imply that a tight inner boundary is not anticipated. The caution against unrestricted growth has to be considered in the context that at the date of the Booklet the requirement for District-wide Local Plan did not exist and did not arise until the reforms of 1992.

2.10 For clearer understanding of the implication of these phases – *'the about 6-mile outer boundary'*, *'the belt'* and *'the 50,000-acre area'* - it is possible to deduce a median or average depth for the YGB and in consequence a general starting point for detailing the inner boundary as well as locating an outer radius. This concept I have displayed in my main submissions as an exhibit at Annexe V xii on an OS plan at 1:25000 by red circumferences for the 6-mile outer boundary and the median or average line(radius) of the inner boundary. For ease of reference I attach a copy of that exhibit to this Note. The inner boundary circumference thereby displayed is consistent with the inner boundary of the RSS Key Diagram. In this regard, I assume the circumference of the dots on Key Diagram is a line based on the outer edge of dots indicating the inner boundary. That assumption reflects

where the inner boundary would be assumed to be if the dots were replaced by a line of similar thickness.

- 2.11 I also infer from the Booklet description that there is good and pleasant farmland between the inner edge of the green belt and the Strays and the urban core, that is *open land running into the City*.
- 2.12 None of this interpretation of policy is consistent with the green belt coming up to the urban core let alone extending into it.
- 2.13 I also consider an objective assessment of the Booklet (1988) dialogue was that expansion of York was acceptable and no specific limits were envisaged merely that *unrestricted expansion* was to be avoided. This is particularly so as the Booklet describes this area as '*the bulk of the land is good open farm land*'. The same applies to the land inside the inner radius and so it would seem logical that building on the land within the inner radius is by and large not going to cause adverse impact to the setting provided by the green belt which remains as this open farmland. The issue for the area between the inner boundary and the urban core is does development adversely impact on the character and setting of the historic city. So, therefore, one would expect to see an evidence base which produced that assessment in respect of land up to the median line of the inner boundary at least. I perceive no such evidence is deduced by the LPA. Without such evidence any Plan proposals must fail to fulfil the aims of the RSS policy.

- 2.14 I record here, for completeness, that PPG2 1995 was published after the date of the Inspector's Report into the objections to the York Green Belt Local Plan. The relevance of that is discussed in Section 3 below.
- 2.15 It is not apparent from any evidence, produced by the LPA and upon which the Plan could be said to be based, that there is an argument to justify the connection of *the important open areas* (The Strays) to the green belt. Protection of any such connection areas could be achieved without the need to bring the inner boundary of the YGB closer to the built core. This would be by other forms of policy such as for green wedges, if that concept is or could be justified. Again, no justification arises from any evidence submitted by the LPA.
- 2.16 A final point arises from the re-reading of the RSS policy and that is that Policy YH9C refers to *the historic city* and Y1C refers to *the City of York* and *York*. That raises at least a *prima facie* question about the meaning to be attached to the expression *the historic city*. There is no indication in the letter 12.06.2020 as to whether that issue has been addressed by the Inspectors and, if so, how it has been resolved.

Primary Green Belt Policy.

- 2.17 The first occasion when a policy proposal for the general extent of the YGB was accepted for consideration by Government was with the deposit of the North Yorkshire County Structure Plan in 1980.
- 2.18 I consider a relevant and important issue is that the 1980 submission Structure Plan did not propose the policy or the Key Diagram as it was approved by the Secretary of State and as subsequently adopted. The proposal in the submission version was for a more expansive

greenbelt for York and one which conjoined with the West Riding Green Belt to the west and south of York. That proposal was firmly rejected by the Secretary of State, who put forward the revised policy and a revised Key Diagram.

2.19 The Policy E8 (iv) was repeated verbatim in Alteration No1 (1987) and again in the replacement Structure Plan adopted in 1995.

2.20 After the general extent was established in 1980, there were attempts by some of the second-tier authorities to establish parts of the outer boundaries within their District. However, the Secretary of State maintained his stance that the detail, like the general extent, required a comprehensive proposal.

2.21 To this end, in 1990 the County Council proposed that it should promote a Green Belt Local Plan to resolve the inner, outer and inset boundaries due to the unlikely prospect that the local plan processes of the 5 second-tier authorities could be brought forward together.

2.22 To achieve the necessary basis for these proposals the County Council embarked on a process of quantifying development needs up to 2006 in what was described as the Greater York Area. That quantification also involved agreement by the 5 second-tier authorities on its distribution. In 1990 the outcome of this political debate and negotiation resulted in an agreed document entitled the *Greater York Study*.

2.23 That Study concluded that to resolve the development needs 1996-2006 and the resolution of the Green Belt boundaries lay in meeting the residual requirements through the development of a new settlement or settlements beyond the outer boundary.

- 2.24 This led to the production of a York Green Belt Local Plan YGBLP. This Plan went to Public Inquiry to resolve objections in 1991/1992 and the Inspector's Report was published in January 1994, but the Plan was not subsequently adopted. The boundaries which that Plan proposed are those which underpin the currently submitted York Local Plan and so that process requires some more detailed consideration which is set out in the following section.
- 2.25 The PCPA 2004 provided for the replacement of County Structure plans with Regional Spatial Strategies.
- 2.26 The Regional Planning Board for Yorkshire and the Humber (RPB) set out an RSS for consultation and to go to EiP in 2006. The Government Office statement for the EiP noted at para 2/7 that the York Section of the RSS made no mention of the (York) Green Belt and concluded the RSS should include a policy and diagram to guide the definition of the inner and outer boundaries.
- 2.27 The RSS replaced E8(iv) which related specifically to York with the addition of a statement as to the green belts primary purpose but did not repeat any part of Policy E8a.
- 2.28 I along with Jennifer Hubbard and Janet O'Neill (all Chartered Town Planners in private practice) made submissions that for the YGB to be preserved the RSS needed to include a policy as to its general extent.
- 2.29 There was no response from either the RPB or the City of York Council.

2.30 At the EiP up to the day before the York session of the RSS hearing sessions no policy had emerged. I lodged a policy proposal supported by a SA with the Panel's office that day. The Inspector, assisting the Panel Chairman, stated he would not hear any debate on this policy proposal at the session fixed for the following day. I respond that he had in the circumstances no option but to do so.

2.31 The following morning Government Office produced a policy to cover the YGB (but no SA) and that policy was debated. The Panel's Report concluded:

'It is our view that the quickest measure in resolving this matter is for policy YH9 (recast as ENVF policy) to include specific requirements to draw up an inner boundary through an LDF, and for this to be shown on the Key Diagram...'

2.32 In the event the Secretary of State re-issued a revised version of the RSS in 2008 which went to consultation but not to any further public scrutiny. This version when adopted in May 2008 and contained two relevant policies:

***'YH9C. The detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth set out in the RSS and must also endure beyond the Plan period.'* (2026).**

and at:

‘Y1C1. In the City of York LDF, define the detached boundaries of the outstanding sections of the outer boundaries of the YGB about 6 miles from York city centre and the inner boundary in line with YH9C’

2.33 These policies along with policy Y1C2 were saved by the Partial Revocation Order.

3.0 The YGBLP Inquiry and Inspector’s Report.

3.1 The reason why this issue may have importance is that the current Local Plan EiP for York and the adopted plans which address the outer boundary of the YGB in Harrogate, Hambleton, Ryedale and Selby are all, I believe, are based on the YGBLP proposals for boundaries submitted in the YGBLP process in 1991.

3.2 This raises two issues:

- what weight attaches to the outcomes of the YGBLP, which culminated in the Inspector approving the Plan and rejecting the objections. The adoption of the Plan did not then follow but PPG2 was issued which amended green belt policy to accommodate patterns of sustainable development, and
- what weight should be attached to the adopted boundaries in the Harrogate, Hambleton, Ryedale and Selby Local Plans.

3.3 My belief is little or no weight attaches to the YGBLP proposals because:

- They were not evidenced based but specifically had a politically agreed base position in the Greater York Study.

- The Inspector in his report noted the lack of a landscape appraisal.
- He also noted a lack of any justification that York had reached its environmental capacity, and
- he also observes the development requirement data before him was not up-to-date.
- He considered that his conclusions might have been different if emerging policy on sustainability had been in place.

3.4 The YGBLP was not adopted due to a combination of factors which include, the publication of PPG2 1995, the fact a new settlement beyond the YGB did not carry into policy and in 1996 there was a further Local Government reorganisation.

3.5 The YGBLP Inspector's Report is not based upon any assessment of soundness, it was a Report into the resolution of specific objections in a Local Plan Inquiry procedure. The Inspector did observe that:

- An outer boundary at about six miles was an arbitrary concept and that there was no dramatic change in the character of the landscape beyond.
- There is no indication that the Inspector had regard to the Secretary of State's decision letter of the 26.11.1980 which amended the extent of the green belt proposals, Policy E8 and the Key Diagram. The S of S indicated his reasoning in the following terms *'he is anxious that the green belt concept should not be devalued by indiscriminate application or using green belt notation where other meaning of development control in rural areas would more appropriately serve the required purpose'*.

- There were objections where this position would have been a more apposite reason than that given by the Inspector. These were objections to extend the greenbelt but the Inspector never addressed any objection which argued against the boundaries being significantly beyond 6-miles e.g. as at Wheldrake, or Elvington, rather the objection was about whether the land in question served a greenbelt purpose.
- He was not presented with or, as far as I can ascertain, made aware of all the relevant background material such as the '*Draft Proposals Map of 1990*', which showed a 6-mile circumference and significant areas proposed beyond 6 miles particularly to encompass Elvington, Wheldrake, Escrick and Long Marston.

[This Draft Proposals Map was annexed to my Submissions at Annexe 5. This Plan is dated December 1990 and was at scale 1:20000. It had a 6-mile radius superimposed and areas of earlier unadopted sketch plan green belt proposals and areas proposed for addition to the sketch plan areas or deletion from them. This was an approach entirely inconsistent with the Structure Plan policy and produced a result that was inconsistent with it.]

- 3.6 The Inspector took the view that York should be constrained to a small City size which would provide greenbelt within the outer ring road and that views from the outer ring road should provide views of York in a rural setting. Whilst that was his view, it was not supported by evidence as he himself pointed out. He also provided an alternative concept of green belt defining a star shaped city.
- 3.7 The limited small-scale size City approach contradicts the PPG2 (1988) and the Booklet material, where the inner boundary is likely to be beyond the outer ring-road by some margin due to the outer boundary being located at 6 miles and the area limited to 50,000 acres.

3.8 I would submit that, if the Inspector had addressed today the YGBLP proposals for soundness, he would not find them consistent with national policy (PPG2 1988) or in general conformity with the Structure Plan policy E8 (areas beyond 6 miles and beyond features that would have provided suitable durable boundaries). He would also have had to dismiss the YGBLP Plan as not being evidenced based.

3.9 However, I consider it to be particularly relevant to the outcome that the Inspector was not

- provided with the Draft Proposals Map, which had a 6-mile radius imposed upon it, or
- directed to the area of the YGB as set out in PPG2 1988 at 50,000 acres and published just 2 years earlier than the submission of those plan proposals.

3.10 The Inspector did however give a clear steer on how the outer boundary should be plotted whilst lamenting that he could not find a reason why the 6-miles distance had been chosen (see the last bullet point above). He went on to state there was no obvious difference in general visually or in potential to perform Green belt functions between land at 5.5 miles from the City centre and that which was at 6.5 miles from it. He stated '***I consider that the most appropriate way therefore to judge the outer boundary is to seek first to find recognisable and durable boundaries that approximate as closely as possible to an exact 6-mile radius, and only to vary from this for reasons of practicability or for reasons which directly related to the purposes of the Green Belt.***'

3.11 I would submit the Inspector's Statement, in bold italics above, is the appropriate approach and is the correct one and as such:

- explains why the policy uses the word '*about*', attaching to the policy both then and now, and
- indicates that relevant and proportionate evidence would have as the baseline position the 6-mile radius as a starting point for each boundary selection exercise.

3.12 On a separate but related issue for the EiP Inspectors, I observe there is no evidence, submitted by the LPA in the current LP process that it took this approach and no reference has been made to indicate this was the LPA's base position. At submission stage, there was no explanation or indication that boundaries were established from a 6-mile radius starting point. Proposals Map is in fact essentially as set out in YGBLP 1991 but with proposals for a further extension beyond Wheldrake. This stance had been repeated in all documents produced by the LPA since 1998 (the first Local Plan produced after the 1996 Local Government re-organisation).

3.13 All the subsequent material provided by the LPA is not evidence upon which the Plan was based but post-submission justification. Any part of this which can be regarded as 'evidence' is material created after the submission date or *ex post facto justifications* as it was expressed by Mrs. Justice Lieven in the judgments in *Aireborough Neighbourhood Development Forum v Leeds City Council* [2020] EWHC 1461 and 2183 (Admin).

4.0 Planning Policy interpretation.

4.1 I have used as my base line an Approved Judgement by Mr. Justice Dove in case *of Peel Investments (North) Ltd v. SoSHCLG & Salford City Council* CO/5073/2018 in a Sec. 288 TCPA 1990 challenge in a judicial review of an appeal decision.

4.2 At para. 42 Mr. Justice Dove sets out the law applicable to the case in question. I consider the following statements to be relevant to a consideration of the terms of the Inspectors' Letter.

'44. the jurisdiction of the court in relation to a statutory challenge brought, as this challenge is, under Section 288 of the 1990 Act is an error of law jurisdiction. As Sullivan J observed in the case of Newsmith Stainless Ltd vs. Secretary of State for the Environment, Transport and the Regions [2001] EWHC Admin 74; [2017] PTSR 1126 whilst an allegation that a conclusion of the planning merits is irrational or Wednesbury unreasonable is, in principle, available to a Claimant mounting a 288 challenge, it will be a high hurdle to surmount (see paragraph 5 and 6 of the Judgement).

45. Following the decision of the Supreme Court in Tesco Stores Limited v Dundee City Council [2012] UKSC 13; [2012] PTSR 983 the question of the textual interpretation of a planning policy is question of law for the court to determine. The Framework, in addition to being an obvious material consideration to which regard must be had in

accordance with the statutory decision-taking regime, is also an element of policy the interpretation of which is a question of law for the court. As noted in the case of Canterbury City Council v SSCLG and Gladman Developments Limited [2018] EWHC 1611 (Admin) the following principles emerge from the authorities to govern the resolution of questions of planning policy:

“23. In my view in the light of the authorities the following principles emerge as to how questions of interpretation of planning policy of the kind which arise in this case are to be resolved:

i) The question of the interpretation of the planning policy is a question of law for the court, and is solely a question of interpretation of the terms of the policy. Questions of the value or weight which is to be attached to that policy for instance in resolving the question of whether or not development is in accordance with the Development Plan for the purposes of section 38(6) of the 2004 Act are matters of judgement for the decision-maker.

ii) The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute or a contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision (see Tesco Stores at paragraph 19 and Hopkins Homes at paragraph 25). Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical

purpose clearly in mind. It should also be taken into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.

iii) For the purposes of interpreting the meaning of policy it is necessary for the policy to be read in context: (see Tesco Stores at paragraph 18 and 21). The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.”

(iv) As set out above, policies will very often call for the exercise of judgement in considering how they apply in the particular factual circumstances of decision to be taken (see Tesco Stores at paragraphs 19 and 21). It is of vital importance to distinguish between the interpretation of policy (which requires judicial analysis of the meaning of the words comprised in the policy) and the application of the policy which requires the exercise of judgement within the factual context of the decision by the decision - taker (see Hopkins Homes at paragraph 26).

4.3 The Supreme Court judgment in R(on the application of Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council [2020] UKLSC 3 is a case specifically

addressing the interpretation of green belt policy and at para. 3 of the judgment under the heading *History and aims* Carnwath LJ stated :

*Although we are directly concerned with the policies in the NPPF (in its original 2012 version), Green Belt policies have a very long history. It can be traced back to the first national guidance on Green Belt in Circular 42/55 (issued in August 1955). More recently Planning Policy Guidance 2: Green Belts (published 1995 and amended in 2001) (“PPG2”) confirmed the role of Green Belts as “an essential element of planning policy for more than four decades”; and noted that the purposes of Green Belt policies and the related development control policies set out in 1955 “remain valid today with remarkably little alteration” (para 1.1). The NPPF itself, as appears from ministerial statements at the time, was designed to consolidate and simplify policy as expressed in a number of ministerial statements and guidance notes, rather than effect major policy changes (see *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; [2015] PTSR 274, para16ff, 22 per Sullivan LJ).*

4.5 This judgment went on to demonstrate the value of references to the history of the policy to facilitate its interpretation.

4.6 I consider that the decision in R (on the application of *Satnam Millennium Ltd v. Warrington Borough Council* CO/2093/2007 is relevant to the interpretation of policy in relation to the inner boundary and the application of the evidence of the Key Diagram in particular. This decision is addressed in Section 6 below.

4.7 Although the Inspectors' Letter indicates that it does not address the detail of submissions made to the EiP or set out the Inspectors' intelligible and adequate reasons for resolving this principally important and controversial issue, it is apparent from their conclusions that they have failed to give appropriate weight to the history and aims of both National policy and Primary policy in respect of the YGB.

5.0 The Outer Boundary.

5.1 I consider that the correct position in respect of policy in relation to the Outer boundary is e limited to the following element of Policy Y1.

'1. In the City of York LDF, define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from the York city centre.' (my emphasis). Firstly, the word '*the*' and the lower-case term '*city centre*', indicate a point not an area in ordinary language.

5.2 I have submitted, with supporting evidence, that the Local Plan proposals are not in general conformity with the RSS York Green Belt policies as saved by the Partial Revocation Order.

5.3 In their letter to CoYC dated 12.06.2020 the Inspectors address this issue at para. 15-18.

5.4 The Inspectors state that the issue of general conformity with this policy limb in a matter of planning judgement.

5.5 I disagree. Whilst the application of policy may be a matter of planning judgement, its interpretation is not and the Inspectors have incorrectly interpreted the policy. I believe that error is largely due to not having appropriate regard to the context in respect of the History and Aims of the YGB policies, which were the particular focus of my submissions.

5.6 A point is made by the LPA about the definition of the city centre. The LPA has not previously addressed that issue but subsequent to the first phase hearings (addressing this issue) the

LPA submitted 'A Clarification Note' stating it was either St. Sampson's Square or the City Walls area. This so-called Clarification Note is no more or less than attempt to introduce new evidence and is ex post facto justification. I observe that the Clarification Note mis-states the terms of the RSS policy by adding a Capital to the letter c in 'city'. It then goes on to describe the 'City Centre'. I consider the addition of capital letters to the term city centre has an impact for its interpretation.

5.7 The Note clarifies nothing to do with '*evidence upon which the Plan was based.*' The reference to St. Sampson's Square was an idea emanating from a Manchester based planning consultant employed by Arup's, who at the Public Inquiry referred to in the Clarification Note, set forth that proposition. I gave evidence in that Public Inquiry and the said consultant approach me prior to the opening and introduced herself and explained she was interested to meet a person whom the Council had identified to her as an expert on the York Green Belt. From that conversation I am aware that this site-specific appeal was her first encounter with the subject matter. My evidence to the EiP phase 1 hearings was that at the YGBLP Inquiry, the County Council had expressed the view that the appropriate central point was the central tower of the Minster. The YGBLP Draft Proposal Plans, which I exhibited with my initial submission was I believe based on that point and not St. Sampson's Sq. The Plan has a circle with a 6-mile radius and the centre of the circle appears to be the Minster Tower. My evidence is not challenged by the LPA in their Clarification Note and my evidence would be confirmed by anyone who attended the YGBLP Inquiry, such as Jennifer Hubbard, who attended many of the sessions.

- 5.8 However, the Clarification Note then goes on to consider the city centre as an area rather than a point. I believe these are words to define a point not an area, an area would be defined as York City Centre (i.e. using capitals as a pronoun). That is then done by the LPA without explanation of why they alter the words to have upper case first letters. The effect is, however, of being misleading.
- 5.9 Secondly the Key Diagram produced in 1980 in response to the Secretary of States amendment of the policy shows the 6-mile limit is clearly short of the River Derwent and to its west. Although, it is diagrammatic it clearly shows the two are separated by some distance. The City wall based central area produces a result where the outer boundary goes to the River Derwent and so it must be wrong for that reason alone. Both approaches are without foundation and there is no evidence which existed at the date of the Plan submission to justify either position. I accept that the distinction was not obvious in the Structure Plan policy because the whole policy is written in upper case, but that is not so the RSS policy.
- 5.10 The 1980 proposals took the green belt general extent to 9 miles and the Secretary of State reduced this to 6 miles on the basis the extension potentially undermined green belt policy nationally. The current Local Plan proposal takes it to 8.48 miles. It is not consistent with the policy to increase the outer extent by such a margin, some 40.5% greater or more importantly to take up 94% of the distance the Secretary of State found to be unacceptable.
- 5.11 I consider that the approach taken by Inspector Sheppard in 1991 as set out at 3.9 above is the correct approach to resolving the location of the outer boundary. The word '*about*' in the policy is to allow for a variation from the exact 6 – mile point to the appropriate nearby

recognisable and durable boundary feature. Whilst a feature identified to provide the boundary might not be the nearest to the six-mile radius it should be near and that variation should have some justifications. The LPA would be expected to make practicable choices - there will be planning judgements - and the Plan would be based on evidence of that process and contain an explanation as to how it was implemented. There is no such evidence.

5.12 When the EiP Local Plan was submitted to the Secretary of State no such evidence existed. Such evidence as now exists has only been deduced by the LPA in response to specific requests for evidence from the Inspectors. It is not evidence of a boundary determined from a starting point of a 6-mile radius. What has been produced in Topic Papers & the Clarification Note is a post submission justification. The Inspectors appear to give scant disregard for the need for the LPA to have established that their Plan is based on evidence then existing. The material put forward cannot be described as in conformity with the RSS policy requirement in that regard.

5.13 My belief is there was no evidence base because the basis for the YGB outer boundary was to adopt that of the YGBLP 1991 and add a further section beyond Wheldrake, which had been deleted from an earlier sketch plan in 1991. None of the 1991 proposals was evidenced based and none were in conformity with the National policy or Primary policy extant at the time.

5.14 To summarise my concerns on this issue, I consider the key context for the interpretation of outer boundary policy are:

5.14.1 That the policy is limited to the words at 5.1 above and no other part of the text of the Revocation Order is relevant to its interpretation.

5.14.2 That when the underlying policy was created in 1980, the Secretary of State limited broader and wider proposals to around six miles, and

- That the Key Diagram (arising from the Secretary of States amended policy) indicated that the outer radius of the general extent was at some distance from the River Derwent. That is a clear conclusion which arises even though the Key Diagram is not map based.
- The Secretary of State stated in his justification for the amended policy in his decision letter of the 26.11.1980 that *'he is anxious that the green belt concept should not be devalued by indiscriminate application or using green belt notation where other meaning of development control in rural areas would more appropriately serve the required purpose'*. In that context about means as close as can be achieved to that distance.

5.14.3 PPG2 places the overall area of the YGB at 50,000 acres and that would require the green belt outer boundary to be as close to the 6-mile radius circumference as possible and practical or otherwise the inner boundary would be at a similar greater distance from the urban core. That is not indicated by the Key Diagram.

5.14.4 'About' is a term to facilitate the actual boundary to be located along a durable and permanent topographical feature. This would by definition mean close to 6-miles but if any suitable feature was ignored it would be expected that the decision to do so

would be recorded in supporting evidence and justification upon which the submitted Plan is based.

5.14.5 That, in some parts of the outer boundary proposed, the Inspectors recognise that it is located *'little more than a few miles or so at most'* (away from a 6-mile circumference) is not a credible conclusion based on an interpretation of the policy. A proper interpretation cannot reasonably lead to the conclusion that this degree of divergence is very limited. It is a misconceived and irrational interpretation of the policy.

5.14.6 The existence of adopted Local Plans in neighbouring areas is no justification for York's approach, it merely reflects the position that such the proposals elsewhere were equally without an evidence base as they replicated the 1991 proposals exactly. The Inspectors should flag up that these authorities should review these boundaries at the first practical opportunity, particularly where there is a material divergence from the 6-mile radius i.e. at Escrick (Selby) and Long Marston (Harrogate).

5.15 In my opinion the Inspectors have erred in law by interpreting the degree of flexibility they have accepted at paras. 17 and 18 of their letters. This is contrary to the historic evidence and aims behind the 6-mile radius as required by the Secretary of State in 1980. The current RSS policy is on that point identical to the historic policy.

6.0 The Inner Boundary.

6.1 Policy YH9 sets out policy limited to the issue of the detailing of the inner boundary. It states:

***'YH9C the detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth set out in the RSS and must also endure beyond the Plan period.'* (2026).**

6.2 The words in Y1.1 are otiose as they merely refer to the reader back to YH9.

6.3 I do not consider Y1.2 is related to green belt issues at all but is a wider environmental policy that should be separately addressed in the Local Plan process. I did not make this point expressly in my submissions but I did submit that the Local Plan had to be in general conformity with the policy the Partial Revocation Order and so it remains for the Inspectors to address that issue in the EiP but not under green belt. In my opinion the Secretary of State (the Lord Pickles) misunderstood the RSS policies for York and incorrectly considered that Y.1 2 related to greenbelt and not environmental issues more generally as did the subsequent sub-paragraphs of the RSS policy. This original policy is historic context for the interpretation of the Partial Revocation Order.

6.4 The Key Diagram is an important consideration on the policy interpretation having regard to the case of R *(on the application of Satnam Millennium Ltd) v. Warrington Borough Council*

- 6.5 The Inspectors in their letter at paras 12 & 13 conclude, they accept the Key Diagram places the inner boundary beyond the central built-core of York.
- 6.6 The PCPA 2004 provided for the replacement of County Structure plans with Regional Spatial Strategies. The Regional Planning Board for Yorkshire and the Humber (RPB) set out an RSS for consultation and for public scrutiny at the EiP in 2006. The Government Office statement for the EiP noted at para 2/7 that the York Section of the RSS made no mention of the (York) Green Belt and concluded the RSS should include a policy and diagram to guide the definition of the inner and outer boundaries.
- 6.7 I along with Jennifer Hubbard and Janet O'Neill (all Chartered Town Planners in private practice) made submissions that for the YGB to be preserved the RSS needed to include a policy as to its general extent.
- 6.8 There was no response to Government Office's recommendation from either the RPB or the City of York Council or in that regard to the submissions of the private consultants.
- 6.9 At the EiP up-to the day before the York session of the RSS hearing sessions no policy had emerged. I lodged a policy proposal supported by a SA with the Panel's office that day. The Inspector assisting the Panel Chairman stated he would not hear any debate on this policy proposal at the session fixed for the following day. I respond that he had in the circumstances no option but to do so.

- 6.10 Again, I consider the issue which the Inspectors have addressed in their letter of the 12.06.2020 in respect of the inner boundary is one of interpretation of policy not planning judgement as to its application.
- 6.11 I consider RSS policy Y1C.2 is very relevant to the interpretation of YH9. In addressing *the nationally significant historical and environmental character of York*, Y1C2 is not necessarily addressing the green belt at all but is specifically identifying the *'important open areas.'* These, I believe are 'The Strays' i.e. areas of open land within the urban core. I do not accept that these important areas are in any way harmed if they do not link to the green belt. They have their own historic significance, character and appearance. However, in addition to green belt there is an issue of protecting the nationally historic character of York. I do not believe this issue has been the subject of any separate evidence base by the LPA but the Local Plan needs to address this to be compliant with the RSS. I anticipate that the setting of the nationally significant historical character is potentially distinct from that encompassed by the green belt purpose. However, in the absence of any assessment of these features underpinning the submitted plan neither I nor the Inspectors know whether there is any policy in the submitted plan to address Y1C.2.
- 6.12 What does follow from Y1C.2 is that the *'important open areas'*, the Strays, are not expected to be within the green belt. If that assessment is right, these *'important areas'* will need separate protection and my submission states that a green wedge policy would be both more appropriate and afford better protection than its green belt policy (such as the restriction on large scale agricultural buildings). I would add that such policy could extend to

land connecting these important open areas up-to the inner boundary of the green belts but that would need some justification. The LPA have placed great store on the need to protect these areas and has used that to justify the green belt being brought tight to the urban core and then extending into it. There seems no necessity in terms of affording protection to these areas to link them to the green belt around York which is land of a different character.

6.13 I consider the circumstances considered by Mr. Justice Sullivan at para. 36 onwards of his Judgement in *Satnam Millennium Ltd v. Warrington Borough Council* have application to the circumstances of the RSS Key Diagram. If the Key Diagram provides clarity that the inner boundary falls short of the urban core then it cannot then be proposed to come within it to or towards the urban core. That in turn does not mean land within the inner boundary cannot be protected as open space, if necessary, to sustain the character of the historic city but it means the protection is afforded by policy other than green belt designation and would have to have its own justification. There is no justification to extend beyond limit identified by the Key Diagram further inwards towards the City and Y1C.2 underpins that separation should exist.

6.14 The interpretation of the Key Diagram has also to be considered in its context. The context means that the consequence of the green belt area in PPG2 (1988) and the Booklet and the description which indicates York is not at its limits are interpretive aids. Clearly this aligns with the Key Diagram indicating an inner boundary set away from the urban core. That is the context of the policy.

- 6.15 The RSS Key Diagram was different from early Key Diagrams in Regional policy/guidance when the Government office was potentially relying on the outcome of the 1991YGBLP Inquiry rather than engaging with the detail of policy making. In 2008 the RSS was having to become the strategic policy base for the general extent of the YGB, so as to replace the Structure Plan policy E8 that would lapse on its adoption. In consequence I submit greater attention was given to this detail including the Key Diagram in the RSS. I further submit that this detail aligns with the previous Government statements in PPG2 1988 and the Booklet – The Green Belts.
- 6.16 The inner boundary is about protecting the character of the historic city and the open farmland of the green belt is its primary setting. That fact may well have implications for inset settlement policy but has no justification in respect of requiring the inner boundary to be tight to the existing urban core. Rather the contrary is the policy proposal as denoted on the Key Diagram and in PPG2 (1988).
- 6.17 PPG2 (1988) and the Booklet clearly signal that there is capacity for growth of the urban core. It does, however, indicate there is a need for some restriction to growth and that is to be provided by a 50,000-acre belt around the City with its outer edge at 6-miles or thereabouts.
- 6.18 PPG2 1995 and subsequent NPPF policy identify the sustainable development patterns that should be prioritised in any pattern of growth – channelling development towards the urban areas inside the Green Belt. That is clearly possible with the correct interpretation of YH9 but not by many of the proposals for development as intended by the Local Plan – such as a

new settlement within the Green Belt. In this regard the scant evidence which did exist before the submission of the plan indicates that the LPA reject the approach of extending the urban core to achieve an objective of non-coalescence with neighbouring settlements. No explanation of why that is justified is offered given the imperative of NPPF policy for sustainable patterns of development and the fact the terms of E8(a) of Structure Plan policy was not included in the RSS policy. The exclusion of the terms of E8 (a) I take as clear evidence that the coalescence issue was intended to be dropped as a policy requirement and that would reflect the change in green belt policy arising in 1995 on the issue of sustainable patterns of development.

6.19 The withheld evidence of the ECUS appraisal in 2000 indicates there are peripheral sections of the urban core which are outwith the character of the historic city. In these locations development can take place without adverse impact on the character and in some places mitigate the adverse visual impacts of the existing built form. That observation was also made by Inspector Sheppard in the YGBLP Inquiry in 1991 Inquiry Report para A7.4.

6.20 Equally, the issue of sustainable patterns of development looks to channelling development towards inset settlements, coupled with the fact the RSS choose not to include Policy E8(a) of the Structure Plan (see 2.6 above) clearly indicates those issues in relation to defining boundaries are not addressed in conformity with RSS or consistent with national policy. Excluding E8(a) from the RSS version of YGB policy clearly signals that:

- The need to regulate the size and shape of urban areas,
- Prevent coalescence with existing settlements, and

- The need to preserve areas of open land extending into the urban area from the countryside,

are **not** material concerns for the purpose of establishing the inner boundary. The deletion of the last bullet point did not mean that the Strays were not to be protected, that was done under a different Policy [Y1C 2.]. Yet these very issues are relied upon by the LPA to establish their green belt proposals in their misconceived approach to RSS policy. An approach which is not in conformity with the policies relating to the York Green Belt.

**George E Wright MA MRTPI
22nd September 2020**